



INTERIOR BOARD OF INDIAN APPEALS

Wakpala School Board (Smee Independent School District)
v. Bureau of Indian Affairs

20 IBIA 242 (09/09/1991)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

WAKPALA SCHOOL BOARD (SMEE
INDEPENDENT SCHOOL DISTRICT),
Appellant

v.

BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Docketing Appeal and Referring
: Matter to the Assistant Secretary -
: Indian Affairs
:
: Docket No. IBIA 91-129-A
:
:
: September 9, 1991

Appellant Wakpala School Board (Smee Independent School District) is a public school located in Wakpala, South Dakota, on the Standing Rock Sioux Reservation. Appellant sought a hearing in regard to a January 28, 1991, decision of the Assistant Secretary - Indian Affairs (Assistant Secretary) denying its application to become a Bureau of Indian Affairs (BIA) school pursuant to P.L. 100-297, section 5104, 25 U.S.C. § 2001(k). By letter dated January 24, 1991, the Acting Assistant Secretary requested that the Office of Hearings and Appeals designate an individual to hold a hearing in the matter. The case was assigned to District Chief Administrative Law Judge John R. Rampton, Jr., who held a hearing on March 26, 1991.

Judge Rampton issued a recommended decision in the matter on August 29, 1991. He sent his recommended decision to the Board of Indian Appeals (Board), according to the usual procedures for appeals from administrative decisions of BIA officials that require an evidentiary hearing. The Judge further advised the parties that they could file exceptions or other comments with the Board pursuant to 43 CFR 4.339.

The present case is a matter of first impression before both the Board and Judge Rampton. Judge Rampton found that the case was governed procedurally by a memorandum issued on August 9, 1988, by the Deputy to the Assistant Secretary - Indian Affairs/Director (Indian Education Programs) (Deputy Assistant Secretary). Section 8(b)(3) of that memorandum provides that a hearing, if requested, will be conducted in accordance with 25 CFR 271.81. This is the hearing conducted by Judge Rampton. Section 8(b)(4) states: "Upon receipt of the results of the hearing, the Director will issue a final decision." Although the Director is not identified in section 8, it appears from the context of the entire memorandum that the official identified is the Deputy Assistant Secretary.

The Board normally does not review BIA education decisions. See 25 CFR 2.4(e) ("The following officials may decide appeals: * * * The Interior Board of Indian Appeals * * * if the appeal is from a decision made by an Area Director or a Deputy to the Assistant Secretary - Indian Affairs other than the Deputy to the Assistant Secretary - Indian Affairs/Director (Indian Education Programs)"). The August 9, 1988, memorandum also does not contemplate a role for the Board. It thus appears that a recommended decision issued by an Administrative Law Judge in a case arising under 25 U.S.C. § 2001(k) should normally be sent to the Deputy Assistant Secretary.

As noted above, however, the decision being reviewed was rendered by the Assistant Secretary. Because of the Assistant Secretary's involvement in this matter, the Board finds that Judge Rampton's recommended decision should be referred to the Assistant Secretary for appropriate review and final decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this matter is docketed under the above case name and number and is referred to the Assistant Secretary -Indian Affairs for appropriate action.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge